IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.531 OF 2006

Mesrs Uma Corporation .. Petitioner
v/s.
Krishna Prabhakar,
Assistant Commissioner of Income-Tax,
Central Circle-2, Mumbai and others .. Respondents

Mr.Percy Pardiwalla with Mr.P.Y.Vaidya i/by Mr.A.K.Jasani for the petitioner.

Mr.B.M.Chatterjee for the respondents.

CORAM : R.M. LODHA &
J.P.DEVADHAR, JJ.

DATED : 14TH MARCH, 2006.

P.C.

Heard Mr.Percy Pardiwalla, the learned counsel for the petitioner and Mr.B.M.Chatterjee, the learned counsel for the respondents.

2. Rule. Returnable forthwith.

3. By consent, Rule is heard finally at this stage.

4. On 7th March, 2006, we passed the following order:-

"1. Inter alia contention of Mr.Percy Pardiwala,

the learned counsel for the petitioner is that on the application made by the assessee, the Commissioner granted certificate to the assessee setting forth the voluntary disclosure of income and the income tax paid for the same. He states that the said certificate holds the field and has not been cancelled as yet. His submission is that as per Section 68 of the Voluntary Disclosure of Income Scheme, 1997 (Finance Act, 1997) the amount of voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Income Tax Act and, therefore, the notice under Section 148 of the Income Tax Act, 1961 impugned in the present writ petition is without jurisdiction.

2. Mr.Chatterjee, the learned counsel for the revenue does not dispute that the certificate granted by the Commissioner under Section 68(2) of the Voluntary Disclosure of Income Scheme, 1997 still holds the field and that the said certificate has not been cancelled. If that be so, we wanted to know from the learned counsel for the revenue how could the amount of voluntary disclosed income be included in the total income of the assessee and how could the notice under Section 148 of the Income Tax Act, 1961 be issued to the assessee.

3. The learned counsel for the revenue prays for time to seek instructions.

4. Stand over for one week."

5. Mr.B.M.Chatterjee, the learned counsel for the revenue submits that according to the respondents, the petitioner could not have taken benefit of Voluntary Disclosure of Income Scheme, 1997 (Finance Act, 1997) in view of pendency of Miscellaneous Petition No.30 of 1997, Maharashtra State Financial Corporation v. M/s.Reliance Industrial Producers Co-op.Society Limited and others wherein two partners of the

petitioner firm were defendant Nos.3 and 4.

6. We are afraid, the contention of the learned counsel for the revenue cannot be accepted. It is a fact that the petitioner applied under Voluntary Disclosure of Income Scheme, 1997, and that the concerned authority after holding that the petitioner was eligible under the said scheme and that section 78 of the said scheme was not attracted, granted the benefit of the said scheme to the petitioner and a certificate was issued by the Commissioner under section 68(2) to the petitioner. That the certificate granted by the Commissioner under section 68(2) of the Voluntary Disclosure of Income Scheme, 1997 is still holding the field, is also not disputed by the learned counsel for the revenue. As a matter of fact, Mr.Chatterjee submitted before us that the certificate issued by the Commissioner under section 68(2) of the said scheme cannot be cancelled or revoked. So long as the certificate under section 68(2) of the scheme holds the field, the learned counsel for the revenue also admits that the amount of voluntarily disclosed income cannot be included in the total income of the declarant for any assessment year under the Income Tax Act. In what, Mr.B.M.Chatterjee, the learned counsel for the revenue submitted before us, we fail to understand the justification of the notice under section 148 of the Income Tax Act, 1961. Rather, we find that issuance of

notice under section 148 of the Income Tax Act, 1961 is an abuse of the power by the respondent No.2.

7. Consequently, we quash and set aside the notice dated 31.3.2005 (Exhibit `K'). Rule is made absolute in the aforesaid terms with no order as to costs.

(R.M.LODHA, J.)

(J.P.DEVADHAR, J.)